IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6871 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAXABEN VASANTKUMAR RAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6871 of 2003

MR JM BUDDHBHATTI for Petitioner No. 1

MR PR ABICHANDANI, APP for Respondent No. 1

MR CL SONI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/12/2003

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. P.R. Abichandani, Ld. APP for respondent no. 1 and Mr. C.L. Soni, Ld. Advocate for respondent no. 2.

2. This application has been filed u/S. 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') seeking the following reliefs :-

'(b) to call for the record and proceedings and after perusal of the same and after hearing the advocate of the petitioner, allow the same by quashing and setting aside the Judgments of ordering prosecution and dismissing the appeal.

(c) stay the further proceedings of FIR registered at Crime Register No. I-34/1999 filed before Gondal City Police Station,'

2.1. It appears that in a civil proceedings being Special Civil Suit No. 111 of 1995 pending before the learned Civil Judge [S.D.] the applicant is alleged to have given a surety of a person, who is found to be dead. In view thereof, present opponent no. 2 submitted an application at Exh. 41 on 7th January, 1998 that the applicant has played fraud upon the Court by creating a forged record of bail bond and given surety in the name of a dead person, namely Bhima Viram, who has expired on 12th July, 1991. The present opponent, therefore, submitted that the applicant be prosecuted for committing offences under sections 420, 467 and 471 of the Indian Penal Code (for short 'IPC').

2.2. In view of the said application, the learned Civil Judge, after taking into consideration the application, the reply filed by the present applicant and various other documents produced before him, passed an order dated 23rd December, 1998, allowing the said application and directing the Registrar of the said Court to file a criminal complaint against applicant within a period of 10 days from the date of the order.

3. Having been aggrieved by the said order, applicant preferred Criminal Appeal No. 4 of 1999 in the Court of the learned Addl. Sessions Judge at Gondal. The Ld. Addl. Sessions Judge vide judgment dated 7th June, 2003 dismissed the appeal solely on the ground that it was filed after the expiry of period of limitation. He, however, decided the issue with regard to technical breach committed by the learned Judge while observing the provisions of section 340 of the Cr. P.C. in favour of the applicant.

4. It is this judgment which is now under challenge before this Court in these proceedings.

5. Having heard Mr. M.J. Budhdhbhatti, learned advocate for the applicant, Mr. P.R. Abichandani, Ld. APP for opponent no. 1 - State and Mr. C.L. Soni, Ld. Advocate for opponent no. 2, it clearly appears that the learned Civil Judge has upon consideration of various documents placed before him including the application of the opponent no. 2 and reply thereof filed by the present applicant together with the respective documentary evidence, come to the conclusion that some fraud has been played upon the Court. It has, therefore, directed the prosecution to be lodged against present applicant and, therefore, he has given such direction to the Registrar of the Civil Court [S.D.] at Gondal.

5.1. The perusal of record will show that the Ld. Addl. Sessions Judge has on the aspect of technical breach being committed by the Ld. Civil Judge, has decided the issue in favour of the applicant. The provision of section 340 of the Cr.P.C. reads as under:-

"340. (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in

any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

The aforesaid provision would clearly show that when the complaint is required to be filed, it has to be done by the concerned learned Judge and he has to sign it. In the present case, the said requirement is not followed by the concerned Judge. It may be noted here that on this count the learned Addl. Sessions Judge in appeal has held issue in favour of the applicant. However, on the ground of limitation, the appeal has been dismissed.

5.2. In view of this technical defect, the present application is required to be allowed and it is allowed and the impugned orders of the Ld. Addl. Sessions Judge, Gondal and Ld. Civil Judge [S.D.], Gondal are quashed and set aside. The learned Judge will, however, on the basis of the inquiry, which is already held by him, follow the procedure as laid down in Section 340 of the Cr.P.C. and lodge complaint before the appropriate Court, if thought necessary. Rule made absolute. D.S. permitted.

[AKSHAY H. MEHTA, J.]

* Pansala.